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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12

13 GIL CROSTHWAITE, et al., as Trustees of the
OPERATING ENGINEERS HEALTH AND
14 WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA, et al.,

15 Plaintiffs,

16 v.

17 KICKIN ENTERPRISES, INC., and STEVE
18 LAWRENCE SCHALLER,

19 Defendants.
20
21

Case No.: 07-6460 WHA

**REQUEST FOR CONDITIONAL 90-DAY
DISMISSAL and vacating of Case
Management Conference:**

Date: May 8, 2008

Time: 11:00 a.m.

Location: 450 Golden Gate Avenue,
San Francisco, California

Courtroom: 9, 19th Floor

22 Plaintiffs hereby conditionally dismiss this action, pending anticipated resolution between
23 the parties as follows:
24

25 (1) This is an action by Plaintiff Trust Funds for contribution payments due from
26 Defendants for work performed by their employees from June through November, 2007.
27
28

1 (2) Defendants represented that a certain general contractor was withholding their
2 payment for work performed, and that payment to Plaintiff Trust Funds was contingent in large
3 part on receipt of those funds, although some additional amounts are due from Defendants.

4 (3) Plaintiffs advised that they would file Stop Notices, and requested specific
5 information from Defendants which would allow them to do so. Defendant neither provided the
6 information, nor executed the proposed Stipulation for Entry of Judgment to establish his
7 requested payment plan, for all amounts owed by defendant to date, to resolve the matter.
8

9 (4) Plaintiffs nevertheless obtained the information needed and recently filed those
10 Stop Notices, thereby securing the amounts owed from those jobs, to Plaintiffs.

11 (5) Plaintiffs are now advised that Defendants' non-responsiveness has been due to
12 Defendants' being out of town and out of cell phone range, on a logging job. Plaintiffs believe that
13 Defendants will execute the Stipulation upon their return, credit will be stipulated to for any
14 moneys received from those Stop Notices.
15

16 (6) Upon receipt of the executed Stipulation, Plaintiffs will file an immediate dismissal
17 without prejudice, with the court to retain jurisdiction in the event of defendants' default.

18 (7) Plaintiffs therefore now request a 90-day Conditional Dismissal, to allow
19 Defendants' return to communication range and execution of the Stipulation as anticipated.
20 Plaintiffs further request that the Case Management Conference, currently scheduled for May 8,
21 2008, be vacated, along with the remaining case calendar.
22

23 (8) In the event that the Stipulation is not executed as anticipated, Plaintiffs will move
24 the court for entry of Default Judgment, the clerk's default having previously been entered in or
25 about March, 2008.

26 I declare under penalty of perjury that I am the attorney for the Plaintiffs in the above
27 entitled action, and that the foregoing is true of my own knowledge.
28

1 Executed this 6th day of May, 2008, at San Francisco, California.

2 SALTZMAN & JOHNSON
3 LAW CORPORATION

4 By: _____/s/_____

5 Muriel B. Kaplan
6 Attorneys for Plaintiffs

7
8 IT IS SO ORDERED.

9 Dated: _____

10 US District Court Judge

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to this action. My business address is 44 Montgomery Street, suite 2110, San Francisco, California 94104.

On May 6, 2008, I served the following document:

REQUEST FOR 90-DAY CONDITIONAL DISMISSAL

on the interested parties in said action by placing a true and exact copy of each document in a sealed envelope with postage thereon fully prepaid, in a United States Post Office box in San Francisco, California, addressed as follows:

**Steve L. Schaller
Agent for Service of Process
Kickin Enterprises, Inc.
8865 Airport Blvd., Suite D
Redding, California 96002**

**Steve L. Schaller
8865 Airport Blvd., Suite D
Redding, California 96002**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 6th day of May, 2008, at San Francisco, California.

_____/s/
Maria Sam